

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In re )  
)  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Stations )  
(Gaylord, Michigan) )

MM Docket No. 98-107  
RM-9288

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**REPLY COMMENTS OF DARBY ADVERTISING, INC.**

Darby Advertising, Inc. ("Darby"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.

1. In its Petition for Rulemaking, Darby proposed to amend Section 73.202(b) of the Commission's rules, the Table of Allotments for FM Broadcast Stations, to substitute Channel 268A for Channel 237A at Gaylord, Michigan, and modify the license for Station WMJZ to specify operation on Channel 268A. This channel substitution is necessary to eliminate short spacing that exists between WMJZ and an allotment at Sault Ste. Marie, Ontario, Canada, on Channel 238G.<sup>1</sup> In addition, Channel 268A, 101.5 MHZ, is the only frequency that would permit WMJZ to operate as a six kilowatt facility at WMJZ's present transmitter site.

2. Northern Christian Radio, Inc. ("NCR") filed comments and a counter-proposal requesting that the Commission allocate Channel 268A at Gaylord, Michigan, and reserve it for noncommercial educational ("NCE") use. NCR argues that this is necessary because there are no

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<sup>1</sup> Since Channel 237A is shortspaced with the allotment at Sault Ste. Marie, Ontario, Canada, it should be removed from the FM Table of Allotments.

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other FM channels, commercial or noncommercial, that can be allocated to Gaylord in conformity with the Commission's minimum distance requirements, and without a site restriction.

To Satisfy the Goals of Both Darby and NCR, the Commission Should  
Substitute Channel 268A for Channel 237A and the Commission May Find It in the Public  
Interest to Allocate Channel 250A to Gaylord and Reserve it for Noncommercial Educational Use

3. Contrary to NCR's assertion, Darby has determined that the allocation of Channel 250A to Gaylord would meet the Commission's minimum distance requirements and will not interfere with Canadian stations. Therefore, in order to satisfy the goals of Darby and NCR, Darby requests that the Commission substitute Channel 268A for Channel 237A and if the Commission finds that an additional allotment is in the public interest, amend the Table of FM Allotments to add Channel 250A at Gaylord, Michigan, and reserve it for non-commercial use. The Commission has historically allowed alternate channel allotment arrangements where such action allows two interested parties, as well as the public, to benefit from the accommodation.<sup>2</sup>

4. As outlined in the attached Engineering Report, Channel 250A can be allocated to Gaylord at a special reference point to the east-southeast of the city (see Figure 3 of the attached Engineering Report) which is approximately 7.5 kilometers from Gaylord and will easily provide 70 dBu, 3.16 mV/m, city grade signal to the city.

5. Since Channel 268A is the only channel that would permit WMJZ to operate a 6 kilowatt facility from its existing transmitter site, and NCR is committed to applying for the new station, and because NCR can locate its transmitter anywhere in the Channel 250A "open area,"

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<sup>2</sup> See, *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, Sturgis, Kentucky*, MM Docket No. 96-226, RM-8893, released September 11, 1998.

Darby should be assigned Channel 268A and if an additional allotment is desired, Channel 250A should be allotted to Darby and reserved for non-commercial use.<sup>3</sup>

Reserving Channel 250A for Noncommercial  
Educational Use Would Serve the Public Interest

6. NCR proposes to provide a second noncommercial FM station at Gaylord in order to provide alternative noncommercial, educational programming to that presently carried on WHPM(FM).<sup>4</sup> However, as outlined by NCR, there are no reserved band, NCE FM channels available for use by NCR in the Gaylord, Michigan, area because of the potential interference to the operation on VHF Television Channel 6, Gaylord's close proximity to Canada, and the noncommercial FM channels presently licensed by the Commission in communities distant, but adjacent, to Gaylord.<sup>5</sup>

7. While NCE stations generally operate within the reserved portion of the FM band (Channels 201-220), exceptions to this limitation have been made where channels in the NCE band are not available because of foreign allotments or potential interference to operation on VHF Television Channel 6.<sup>6</sup> In this case, if the Commission finds that the provision of an additional NCE station in Gaylord would serve the public interest, the Commission may see fit to amend the Table

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<sup>3</sup> See, *Conflicts between Applications and Petition for Rulemaking to amend the FM Table of Allotments*, 7 FCC Rcd. 4917 at ¶ 2 (1992), *recon. granted in part*, 8 FCC Rcd. 4743 (1993).

<sup>4</sup> NCR Comments and Counterproposal at 2.

<sup>5</sup> *Id* at 2-3.

<sup>6</sup> See, *Sault Ste. Marie*, 12 FCC Rcd. 17372 (1997).

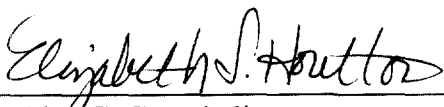
of FM Allotments to add Channel 250A at Gaylord, Michigan, and reserve it for non-commercial use.<sup>7</sup>

Conclusion

WHEREFORE, Darby requests the Table of FM Allotments found in 47 CFR § 73.202(b) be amended as follows:

| <u>Community</u>  | <u>Present Allocation</u> | <u>Proposed Allocation</u> |
|-------------------|---------------------------|----------------------------|
| Gaylord, Michigan | 237A, 294C1               | 268A, 294C1                |
|                   | or                        |                            |
| Gaylord, Michigan | 237A, 294C1               | *250A, 268A, 294C1         |

Respectfully submitted,  
DARBY ADVERTISING, INC.

By:   
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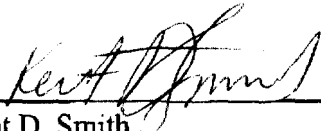
September 15, 1998

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<sup>7</sup> There is no basis for allocating this Channel on a non-reserved basis because no one, other than NCR, filed comments and counter-proposals, nor has anyone else committed to filing an application for a construction permit for the station. In addition, the time for filing comments and counter-proposals in this proceeding has passed. Any comments filed at this time requesting that the Commission allocate Channel 250A to Darby on a non-reserved basis would be untimely under Section 1.415 of the Commission's Rules and should be disregarded.

**DECLARATION OF KENT D. SMITH**

I, Kent D. Smith, President of Darby Advertising, Inc. ("Darby"), under pain and penalty of perjury, do hereby declare that I have read the foregoing "Reply Comments of Darby Advertising Inc." and the facts presented therein are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Kent D. Smith  
President

Date: 9-14-98

**ENGINEERING REPORT**  
IN RESPONSE TO A  
**COUNTER-PROPOSAL TO**  
**RULEMAKING RM-9288**

Add Channel \*250A– Gaylord, MI  
Channel 268A for 237A – Gaylord, MI

**September 1998**

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**E. Harold Munn, Jr. & Associates, Inc.**  
Broadcast Engineering Consultants  
Coldwater, MI 49036

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## **CERTIFICATION OF ENGINEERS**

The firm of E. Harold Munn, Jr. & Associates, Inc., Broadcast Engineering Consultants, with offices at 100 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

The data utilized in this report was taken from the FCC Secondary Database and data on file. While this information is believed accurate, errors or omissions in the database and file data are possible. This firm may not be held liable for damages as a result of such data errors or omissions.

The report has been prepared by properly trained electronics specialists under the direction of the undersigned whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

September 9, 1998

**E. Harold Munn, Jr. & Associates, Inc.**

By Wayne S. Reese  
Wayne S. Reese, President

By Donald J. Baad  
Donald J. Baad, Project Engineer

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Coldwater, Michigan 49036

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**E. Harold Munn, Jr. & Associates, Inc.**  
Broadcast Engineering Consultants  
Coldwater, MI 49036



## **DISCUSSION OF REPORT**

The firm of E. Harold Munn, Jr. & Associates, Inc. has been retained to prepare this engineering report in support of a response by Darby Advertising, Inc. (Darby) to a counter-proposal by Northern Christian Radio, Inc. (NCR) in the matter of MM Docket No. 98-107, RM-9288. In its original rulemaking petition, Darby requested the substitution of Channel 268A, 101.5 MHz, for the present operating frequency of its Gaylord, MI FM facility, WMJZ-FM. This station presently operates on Channel 237A, 95.3 MHz. In its counter-proposal, NCR requested the addition of Channel 268A, without the removal of Channel 237A. NCR also requested that Channel 268A be reserved for non-commercial use.

The present response seeks to achieve the goals of both Darby and NCR by requesting the addition of Channel 250A to the Table of FM Allotments found in 47 CFR §73.202(b), as well as the originally requested substitution of Channel 268A for Channel 237A. Because Channel 268A is usable from the present WMJZ-FM transmitter site, Darby requests that this allocation be reserved for WMJZ-FM. To accommodate NCR's desire for an additional non-commercial channel, Darby requests that Channel 250A be reserved for non-commercial use.

Channel 250A can be assigned to Gaylord, MI using a special reference point located approximately 7.5 km east-southeast of Gaylord. The reference point used for this study is defined by the coordinates: 44° 59' 32" NL and 84° 35' 40" WL. Figure 1 shows a Tabulation of Allocation Spacing for the use of this frequency at the reference site. Inspection of this tabulation will show that all of the current spacing requirements of §73.207(b) are met by the proposed addition to the Table of FM Allotments.

A portion of the Turtle Lake, MI 7 ½ minute topographic map showing the reference site has been included as Figure 2. Inspection of the map will show the reference point to be a suitable location for a transmitter site. Figure 3 shows a relatively large "Open Area" for potential transmitter sites for Channel 250A at Gaylord. The area is bounded by the protection arcs from WKLT at Kalkaska, MI, WIHC at Newberry, MI, and WUPS at Houghton Lake, MI, as well as the need to place a principal community contour (70 dBu – 3.16 mV/m) over the community of Gaylord, MI. Figure 4 is an InterDLG™ map showing such a contour from a full Class A facility located at the reference site. The city limits of Gaylord have been drawn on this map, and the community is shown to be completely within the predicted principal community contour.

Therefore, the present response requests the Table of FM Allotments found in 47 CFR §73.202(b) be amended as follows:

| <b><u>Community</u></b> | <b><u>Present Allocation</u></b> | <b><u>Proposed Allocation</u></b> |
|-------------------------|----------------------------------|-----------------------------------|
| Gaylord, MI             | 237A, 294C1                      | *250A, 268A, 294C1                |

E. Harold Munn Jr. & Associates Inc.  
PO Box 220 = Coldwater MI 49036

FIGURE 1  
TABULATION OF ALLOCATION SPACING

REFERENCE CLASS = A DISPLAY DATES  
44 59 32 N DATA 09-05-98  
84 35 40 W Current Spacings SEARCH 09-08-98

----- Channel 250 - 97.9 MHz -----

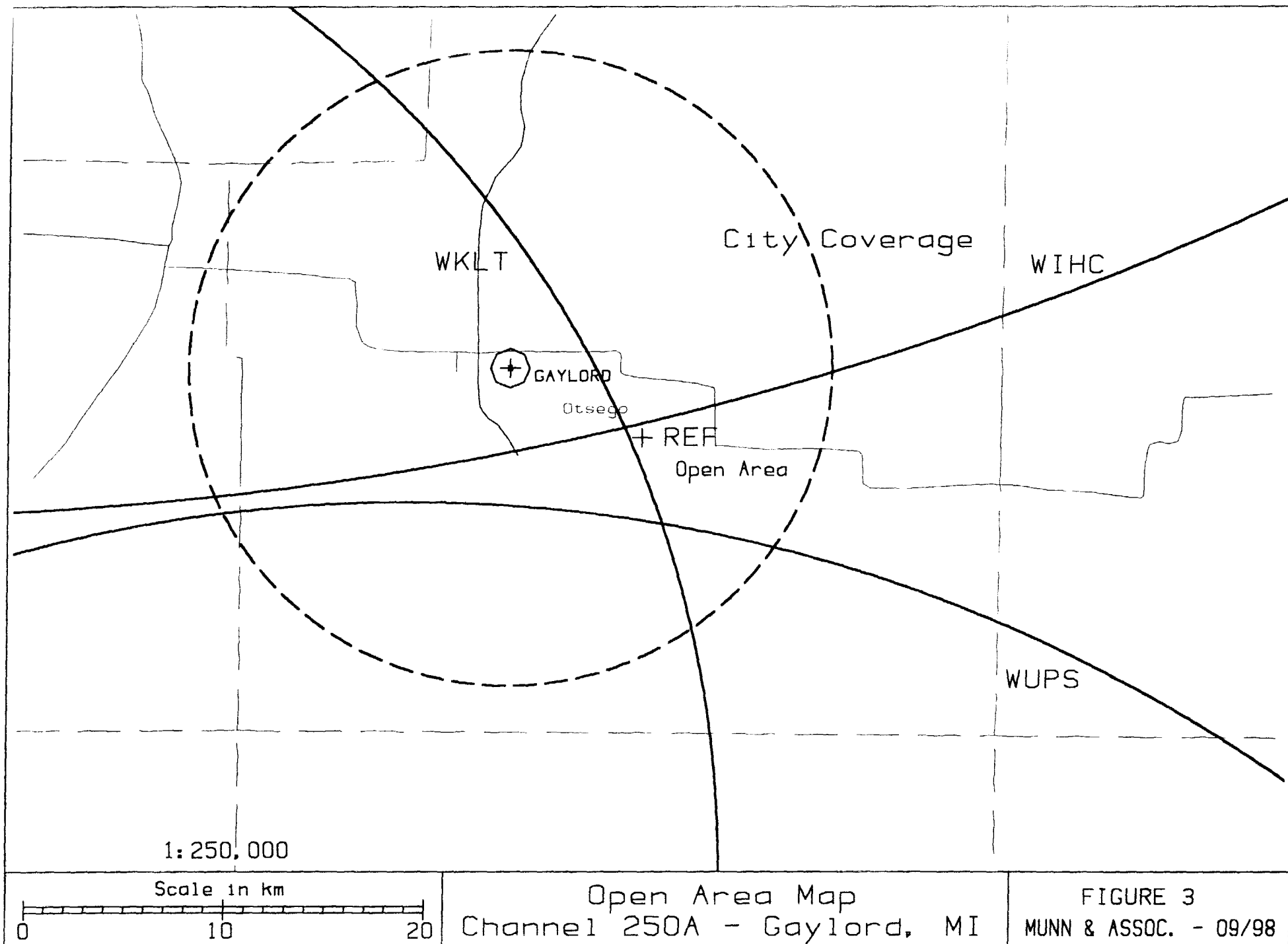
| Call   | Channel  | Location         | Dist   | Azi   | FCC   | Margin |
|--|----------|------------------|--------|-------|-------|--------|
| N. Lat.  | W. Lng.  | Power            | HAAT   |       |       |        |
| WKLT   | LI 248C2 | Kalkaska MI      | 55.59  | 246.5 | 55.0  | 0.59   |
| 44 47 29   | 85 14 20 | CZCN 32.000 kW   | 188 M  |       |       |        |
| Northern Radio of Michigan, I BLH900402KE 960710                       |          |                  |        |       |       |        |
| Proposed to Canada as C1 on 920331-Accepted by Canada 920519           |          |                  |        |       |       |        |
| WIHC   | LI 250C2 | Newberry MI      | 166.70 | 346.5 | 166.0 | 0.70   |
| 46 26 58   | 85 06 04 | C CN 50.000 kW   | 150 M  |       |       |        |
| Cambrian Broadcasting Company BLH9601118K 960412                       |          |                  |        |       |       |        |
| Specially negotiated, short spaced allotment-Approved by Canada 950502 |          |                  |        |       |       |        |
| Allotment remains Class C1 with respect to Canada                      |          |                  |        |       |       |        |
| WUPS   | LI 253C1 | Houghton Lake MI | 79.09  | 188.5 | 75.0  | 4.09   |
| 44 17 18   | 84 44 30 | C CN 100.000 kW  | 299 M  |       |       |        |
| Northlands Communications, In BLH881102KE 960710                       |          |                  |        |       |       |        |
| WGFM   | LI 251C2 | Glen Arbor MI    | 112.34 | 260.7 | 106.0 | 6.34   |
| 44 49 16   | 85 59 47 | CZCN 21.000 kW   | 225 M  |       |       |        |
| Cherry Capital Media, Inc. BLH971212KD 980313                          |          |                  |        |       |       |        |
| One-Step Application from Channel 251C3                                |          |                  |        |       |       |        |
| Proposed as Class B to Canada 970304-Accepted by Canada 970407         |          |                  |        |       |       |        |
| AL250  | AL 250B  | Port Elgin ON    | 260.59 | 102.7 | 223.0 | 37.59  |
| 44 26 00   | 81 24 00 | A 0.000 kW       | 0 M    |       |       |        |
| 921004   |          |                  |        |       |       |        |
| WMRXFM   | LI 249A  | Beaverton MI     | 122.84 | 177.6 | 72.0  | 50.84  |
| 43 53 16   | 84 31 45 | C CN 2.000 kW    | 122 M  |       |       |        |
| Steel Broadcasting, Inc. BLH880816LB 960923                            |          |                  |        |       |       |        |
| Class B1 with respect to Canada  |          |                  |        |       |       |        |
| WMRXFM   | AP 249A  | Beaverton MI     | 122.84 | 177.6 | 72.0  | 50.84  |
| 43 53 16   | 84 31 45 | C CN 4.100 kW    | 122 M  |       |       |        |
| Steel Broadcasting, Inc. BMLH960717KB 960916                           |          |                  |        |       |       |        |
| ERP OF 4.1 KW PER MMB DOC 88-375                                       |          |                  |        |       |       |        |
| Class B1 with respect to Canada  |          |                  |        |       |       |        |
| WKCQ   | LI 251B  | Saginaw MI       | 183.10 | 162.7 | 113.0 | 70.10  |
| 43 25 04   | 83 55 06 | C CN 50.000 kW   | 150 M  |       |       |        |
| The Macdonald Broadcasting Co BLH870819KF 960710                       |          |                  |        |       |       |        |
| SPECIAL NEGOTIATED SHORT-SPACED ALLOTMENT                              |          |                  |        |       |       |        |

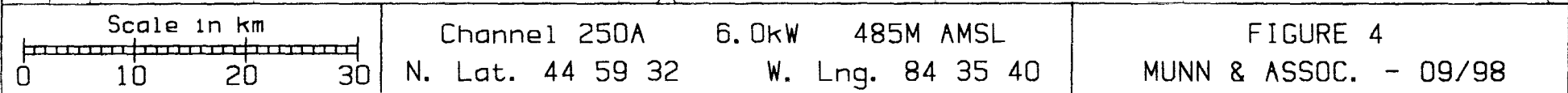
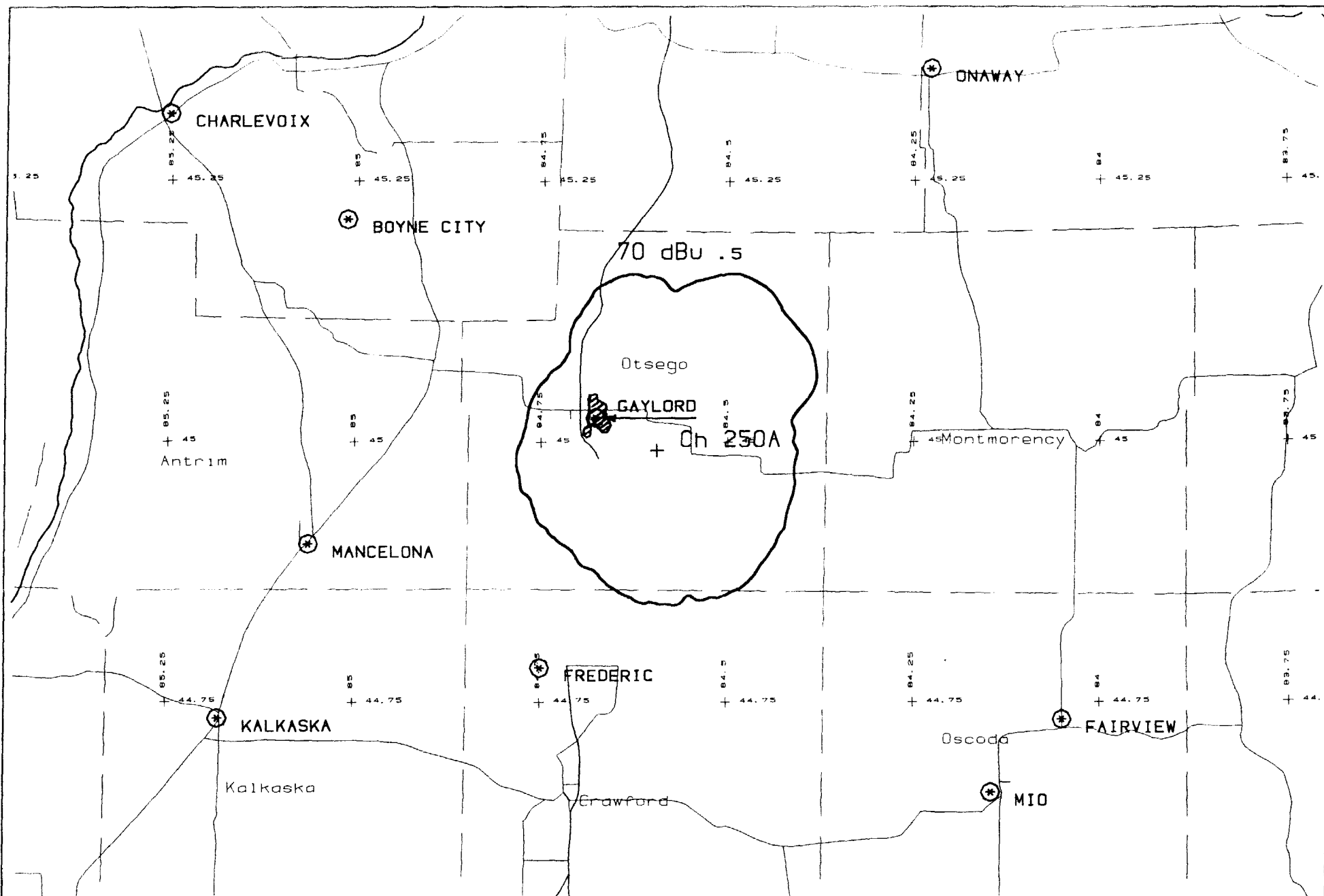
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407411 SW  
(GAYLORD)

**FIGURE 2**





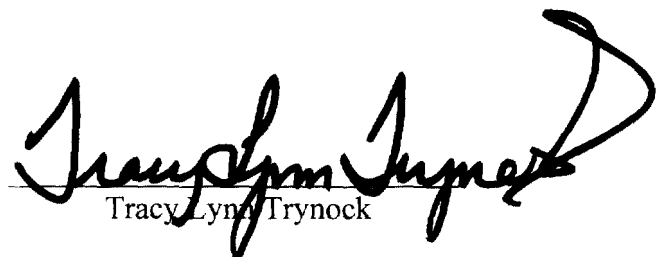


## CERTIFICATE OF SERVICE

I, Tracy Lynn Trynock, hereby certify that on this 15th day of September, 1998, copies of the foregoing "Reply Comments of Darby Advertising, Inc." have been served by first-class United States mail, postage prepaid or by hand delivery upon the following:

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Chief, Allocations Branch  
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Tracy Lynn Trynock

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